



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable E. W. Easterling
County Attorney
Jefferson County
Beaumont, Texas

Dear Sir:

Opinion No. 0-1342
Re: Whether Article 7346 and Article 7347 of the Revised Civil Statutes authorize a Commissioners' Court to re-assess property on which delinquent tax is due because said property was over assessed and over valued originally.

We are in receipt of your letter of August 26, 1939, in which you request an opinion of this Department as to whether or not Articles 7346 and 7347 give the Commissioners' Court the authority to enter an order re-assessing property for delinquent taxes under the facts as set out in your letter, as follows:

"The Home Owner's Loan Corporation is interested in approximately 1,000 pieces of property in Jefferson County, and they are anxious that all delinquent taxes on these properties be paid as soon as practical. On examination of the status of these properties it appears that in quite a number of instances there are many years of back taxes due, and also due to the fact that the owners and former owners have neglected their properties in quite a number of cases, we have discovered that the assessed valuation of said such properties is far in excess of true values."

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Article 7346, provides, in part, as follows:

"Whenever any commissioners court shall discover through notice from the tax collector or otherwise that any real property has been omitted from the tax rolls for any year or years since 1884, or shall find that any previous assessments on any real property for the years mentioned are invalid, or have been declared invalid for any reason by any district court in a suit to enforce the collection of taxes on said properties, they may, at any meeting of the court, order a list of such properties to be made in triplicate and fix a compensation therefor; the said list to show a complete description of such properties and for what years such properties were omitted from the tax rolls, or for what years the assessments are found to be invalid and should be canceled and re-assessed, or to have been declared invalid and thereby canceled by any district court in a suit to enforce the collection of taxes. No re-assessment of any property shall be held against any innocent purchaser of the same if the tax records of any county fail to show any assessment (for any year so re-assessed) by which said property can be identified and that the taxes are unpaid. The above exception, with the same limitation, shall also apply as to all past judgments of district courts canceling invalid assessments."

Article 7347, provides:

"When said list has been so made up the commissioners court may, at any meeting, order a cancellation of such properties in said list that are shown to have been previously assessed, but which

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assessments are found to be invalid and have not been canceled by any former order of the commissioners court, or by decree of any district court; and shall then refer such list of properties to be assessed or re-assessed to the tax assessor who shall proceed at once to make an assessment of all said properties, from the data given by said list (the certificate of the Comptroller as to assessments or re-assessments made by the tax assessor shall not be necessary as required under Article 7207, but he shall furnish all blank forms needed, that uniformity may be had in all counties), and when completed shall submit the same to the commissioners court, who shall pass upon the valuations fixed by him; and, when approved as to the values, shall cause the taxes to be computed and extended at the tax rate in effect for each separate year mentioned in said list; and, in addition thereto, shall cause to be added a penalty equal in amount to what would be six per cent interest to the date of making said list from the date such properties would have been delinquent had same been properly rendered by the owner thereof at the time and for the years stated in said list; provided, that the certificate of any tax collector given during his term of office that all taxes have been paid to the date of such certificate on any certain piece of property, which is fully described in such certificate, or if the tax rolls of any county fail to show any assessments against such property sufficient to identify it, and that the same was unpaid at the dates such rolls may have been examined to ascertain the condition of any property as to taxes unpaid, this shall be a bar to any re-assessment of such property under this law for any years prior to the date of such certificate,

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or such examinations; provided, that the property referred to, when re-assessed, shall be held by an innocent purchaser, who has relied upon the correctness of such certificate, or the tax rolls heretofore referred to."

An assessment is not invalid where the same is made in good faith, regardless of the amount of over assessment. An invalid assessment is one which was void ab initio because of non-compliance with statutory requirements surrounding the assessment or one which was made fraudulently or one in which a fundamentally wrong scheme of assessment was adopted.

In your letter you refer to this Department's ruling on House Bill No. 456. This Opinion is No. 0-930, and is addressed to the Honorable George H. Sheppard, Comptroller of Public Accounts. The following portion of this Opinion directly answers the question you propound in your letter:

"From the opinion of Judge Sharp, in State v. Mallet Land and Cattle Co., 88 S. W. (2) 471, we quote as follows:

"The rule has been repeatedly announced that, in the absence of fraud or illegality, the action of a board of equalization upon a particular assessment is final; and, furthermore, that such valuation will not be set aside merely upon a showing that the same is in fact excessive. If the board fairly and honestly endeavors to fix a fair and just valuation for taxing purposes, a mistake on its part, under such circumstances, is not subject to review by the courts. Texas and Pacific Ry. Co. v. City of El Paso (Tex. Sup.) 85 S. W. (2) 245; Rowland v. City of Tyler (Tex. Com. App.) 5 S. W. (2) 756; Druesdow v. Baker (Tex. Com. App.) 229 S. W. 493; Duck v. Peeler, 74 Tex. 268, 11 S. W. 1111; State v. Chicago, R. I. & G. Ry. Co. (Tex. Com. App.) 263 S. W. 249; Sunday Lake Iron Co. v. Wakefield, 247 U. S. 350,

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38 S. Ct. 495, 62 L. Ed. 1154. However, the rule has been declared that if a board of equalization adopts a method that is illegal, arbitrary, or fundamentally wrong, the decision of the board may be attacked and set aside.'

"Other cases use the language that 'as a general rule, the decision of a board of equalization upon a particular assessment, in the absence of fraud or irregularity, is conclusive.' *Pert Arthur Ind. School Dist. v. Baumer*, 64 S. W. (2) 412; *Nederland Ind. School Dist. v. Carter*, 73 S. W. (2) 935. When so used the words 'final' and 'conclusive' mean the same thing. The value of the property as fixed by the board of equalization is *res adjudicata*, subject only to being set aside for fraud or the adoption of a fundamentally wrong method of assessment."

As pointed out in the Opinion just quoted, the Courts have uniformly held that the Commissioners' Court does not have the authority to re-assess property upon the only ground that the original assessment was based on an over valuation. In the case of *Hinkson v. Lorenzo Ind. School Dist.*, Court of Civil Appeals of Texas, Amarillo, 109 S. W. (2) 1008, the Court said as follows:

"The general rule is that an attack of the character here made by appellant upon assessment valuations made by a board of equalization cannot be justified in the absence of allegations and proof of fraud, or something equivalent thereto, such as lack of jurisdiction, an obvious violation of the law, or the adoption of a principle or method of establishing valuations or making assessments that is fundamentally wrong and which results in a substantial injury to the complainant. Mere differences of opinion, honestly entertained, though erroneous, will not warrant the interference of the courts. *Druesdow v. Baker* (Tex. Com. App.) 229

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S. W. 493; Menardville Independent School Dist. v. Moser (Tex. Civ. App.) 90 S. W. (2) 578, 579; Lubbock Hotel Co. v. Lubbock Independent School Dist. (Tex. Civ. App.) 85 S. W. (2) 776; Simkins v. City of Corsicana (Tex. Civ. App.) 86 S. W. (2) 792; State v. Mallet Land & Cattle Co., 126 Tex. 392, 88 S. W. (2) 471."

In the case of Nederland Independent School District v. Carter et al, Court of Civil Appeals of Texas, Beaumont, 85 S. W. (2) 487, the Court said:

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"We fully recognize the rule contended for by the appellant that the decision of a board of equalization upon a particular assessment, in the absence of illegality, fraud, or something equivalent thereto, is conclusive. It is unquestionable the settled rule in this state that the courts have no supervisory control over boards of equalization. State v. Mallet Land & Cattle Co. (Tex. Sup.) 88 S. W. (2) 471, and Menardville Independent School Dist. v. Moser (Tex. Civ. App.) 90 S. W. (2) 578, and authorities cited."

We are of the opinion that the Commissioners' Court of Jefferson County, Texas, would be unauthorized to pass an order authorizing a re-assessment of the property in question under the facts set out in your letter.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Billy Goldberg*
Billy Goldberg
Assistant

BG:RS

APPROVED SEP 12, 1939

Gracib. Mann
ATTORNEY GENERAL OF TEXAS

